IN THE SUPREME COURT OF FLORIDA

CASE NUMBER 96,384

FRANKENMUTH MUTUAL INSURANCE

COMPANY, a Michigan Corporation,

Plaintiff- Appellant,

v.

ERNIE LEE MAGAHA, as Clerk of Court of Escambia County, Florida and as Successor to Joe A. Flowers, Comptroller, Escambia County, and ESCAMBIA COUNTY, FLORIDA,

Defendants-Appellees,

ON CERTIFIED QUESTIONS FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (Case Number 98-2962)

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REPLY BRIEF OF FRANKENMUTH MUTUAL INSURANCE COMPANY

—

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I. THE LEASE, INCLUDING THE EQUIPMENT NONSUBSTITUTION PROVISION, IS VALID, AS THE ESCAMBIA COUNTY COMMISSIONERS APPROVED A PRIOR EQUIPMENT LEASE CONTAINING AN EQUIPMENT NONSUBSTITUTION PROVISION, AND THIS LEASE CLEARLY DOES NOT ENCUMBER AD VALOREM TAXES, THE COUNTY WAS AWARE OF THIS LEASE, AND IT VOTED AT TWO PUBLIC MEETINGS IN FAVOR OF RETAINING AND USING THE EQUIPMENT WHICH IS SUBJECT TO THIS LEASE.

Escambia County attempts in its brief to portray itself as

being taken by surprise by both this Lease and its specific terms. Escambia County discusses at length why it believes it should not be subject to the Lease, and particularly, paragraph 21 of the Lease. Much of Escambia County's argument seems to hinge upon the County's conclusion the Lease was not sound from a business perspective. But, Frankenmuth has discussed, and Escambia County concedes, that this Court does not review the business judgment underlying the Lease. Frankenmuth Brief, pp. 31 & 34; Escambia County Brief, p. 17. Further, the County should not be heard to complain that the Lease, and particularly paragraph 21 of the Lease, is unacceptable to the County, as Escambia County is familiar with the type lease here at issue.

In 1985, Escambia County reviewed and approved a computer equipment lease entered by Flowers with Burroughs Finance Corporation. Vol. 2, Doc. 97 (Joseph A. Flowers, Jan. 1996 depo) pp. 107-11. The Burroughs lease is almost identical to this Lease. Vol. 3, Doc. 112. The Burroughs lease included a nonappropriation clause which incorporated an equipment nonsubstitution provision. Vol. 3, Doc. 112, ¶ 21. Escambia County does not explain why it objects to the nonsubstitution provision in this Lease when it was willing in 1985 to exercise its broad home rule authority to approve an equipment lease with a nonsubstitution provision. [1]

Escambia County argues that the execution of an essential use/source of funds letter by Flowers constitutes a pledge of the County's ad valorem taxing power. Escambia County Brief pp. 12-13; see Vol. 2, Doc. 95 (Joseph A. Flowers, Nov. 1995 deposition) Exh. 49. This argument ignores the plain language of the Lease, and the plain language and intent of the essential use/source of funds letter. In further support of its argument, Escambia County also misstates the holding of a case in which it was involved with Flowers. Escambia County Brief pp. 12-13.

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[1] Escambia County cites cases and attorney general opinions from several other states to support its argument against enforcement of the equipment nonsubstitution provision. Escambia County Brief p. 11. None of this authority addresses Florida law, and it is of no value in deciding the issues presented to this Court. See e.g., Unified School Dist. No. 207 v. Northland Nat'l Bank, 887 P.2d 1138 (Kan. Ct. App. 1994) (addressing Kansas cash-basis law which prohibits governmental bodies from creating indebtedness in excess of the amount of funds actually on hand at the time of contracting); 88 N.M. Op. Att'y Gen. 67 (1988) (addressing provision in the New Mexico Constitution restricting county debt to certain enumerated projects and requiring in all cases a vote of the county electorate – this opinion was cited in the County of Rio Arriba case); 95 La. Op.

The Lease clearly states that it neither constitutes a pledge of the full faith and credit of the governmental lessee, nor requires a pledge of ad valorem taxes. Vol. 1, Doc. 1, Exh. B ¶ 1. The Lease also specifically provides the lessor does not have the right to require or compel the exercise of the ad valorem taxing power. Id. Rather, the obligations under the Lease are "payable solely from legally available funds." Id. After ignoring the explicit language of the Lease, Escambia County focuses on the essential use/source of funds letter, and argues it results in a pledge of ad valorem tax revenue.

Att'y Gen. 342 (1996) (noting that a nonsubstitution provision would be prohibited in a lease entered by the Board of Veterinary Medicine Examiners, since the Louisiana Constitution absolutely prohibited the Board from incurring debt or issuing bonds).

The essential use/source of funds letter merely stated it was expected and anticipated funds would be available to pay the obligations under the Lease because of Escambia County's ad valorem taxing power. Vol. 2, Doc. 95 (Joseph A. Flowers, Nov. 1995 depo) Exh. 49. The essential use/source of funds letter clearly does not commit any monies for any purpose. The former Comptroller expressed that view in his deposition. Vol. 2, Doc. 95 (Joseph A. Flowers, Nov. 1995 depo) pp. 84-93. At most, the letter suggests it is generally expected and anticipated funds will be available to service the Lease because Escambia County has the ability to generate monies through the levy of the ad valorem taxing power. The essential use/source of funds letter does not attempt to require or even suggest that funds generated from the ad valorem taxing power be used to make lease payments. Vol. 2, Doc. 95 (Joseph A. Flowers, Nov. 1995 depo) Exh. 49. The Lease itself makes it clear ad valorem revenues are not committed to the Lease obligations.

Mr. Flowers testified that his office budget provided for annual Lease payments to come out of revenue other than taxes. Vol. 2, Doc. 95 (Joseph A. Flowers, Nov. 1995 depo) pp. 90-91. Mr. Flowers was aware he could not pledge the County taxing authority, and he did not believe he was pledging County taxes in the essential use/source of funds letter. Id. pp. 84-91. The Comptroller's Office simply used the money in the Comptroller's Office budget, which budget was submitted to and approved by Escambia County, in order to pay fees required under the Lease. Id. pp. 84-93. Escambia County was free to elect whether to use ad valorem revenue to fund Lease payments, and the lessor had no ability under the Lease to compel the levy of ad valorem taxes for this

purpose.[2]

Whether Escambia County elected to utilize ad valorem revenue to make Lease payments is irrelevant. Neither the Lease nor the essential use/source of funds letter allow the lessor to compel a levy of ad valorem revenue. That is the important inquiry. Regardless whether ad valorem revenue was used to satisfy Lease obligations, it is clear there has been no pledge of ad valorem revenues. See e.g., State v. Alachua County, 335 So.2d 554, 558 (Fla. 1976) (clear disclaimer of pledge of ad valorem taxation for payment of bonds allows determination bonds meet restrictions of article VII, section 12, Florida Constitution).

Escambia County attempts to bolster its argument that ad valorem taxes were pledged by citing prior litigation between the County and Flowers which Escambia County suggests limited its authority over the Comptroller's budget. Escambia County claims the holding in Escambia County v. Flowers, 390 So.2d 386 (Fla. 1st DCA 1980), made it a ministerial act for the County to fund the Comptroller's office at a particular level. Escambia County Brief pp. 12-13, 32. This assertion simply is not correct.

Escambia County v. Flowers confirmed that the Board of County Commissioners has wide discretion in approving, modifying, or rejecting budget requests, including those made by Flowers. Flowers, 390 So.2d at 388. In that case, Flowers made a sufficient showing to demonstrate to the court an arbitrary and capricious abuse of that discretion by the Board of County Commissioners. Flowers, 390 So.2d at 388-89. The case confirms that Escambia County had great control over the Comptroller's budget, subject to judicial review only in the event of arbitrary and capricious actions by Escambia County.

Escambia County criticizes the authority relied on by Frankenmuth to demonstrate that a pledge of the ad valorem taxing power did not occur in this case. Escambia County Brief pp. 16-18. In essence, Escambia County claims the cases cited by Frankenmuth mandate an identification of the non-ad valorem revenues from which payment will be

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[2] Whether a proper nonappropriation occurred under the Lease has never been a litigated issue in this lawsuit. Frankenmuth has sought in this suit only to establish the validity of the Lease and against whom the Lease may be enforced. While Frankenmuth concedes it cannot compel budgetary appropriations to fund Lease payments, it has never conceded that damages are not available to it for breach of the Lease. Damages may well be available for failure to comply in good faith with the terms of the Lease or for uncompensated use of the equipment subject to the Lease, among other theories. This Court has never held that no remedy can be available against a government lessee where nonappropriation occurs. See Frankenmuth Brief, p. 33.

made in order for a court to reach the determination ad valorem revenues have not been pledged in violation of the Florida Constitution. Escambia County's characterization of the cited cases is inaccurate.

The cases cited by Frankenmuth and criticized by Escambia County dealt with bond validation proceedings. Frankenmuth Brief pp. 29-35. None of the bond validation cases cited by Frankenmuth demand an identification of a revenue source for repayment of a proposed bond issuance in order that a court may determine ad valorem revenues are not impermissibly affected. The only constitutional requirement is that ad valorem taxes not be pledged to secure obligations which mature more than twelve months after issuance. See e.g., State v. Alachua County, 335 So.2d 554, 558 (Fla. 1976) (clear disclaimer of pledge of ad valorem taxation for payment of bonds allows determination bonds meet restrictions of article VII, section 12, Florida Constitution).

The issuance and subsequent marketing of bonds to the public is markedly different from the entering of a municipal equipment lease to be held by an institutional investor. Certainly, it is reasonable to expect the participants in the markets for the multi-million dollar bonds at issue in each of the cases Frankenmuth cited to demand a designation of a revenue source, whether generated by the project at issue or by other non-ad valorem revenue sources, in order for the bonds to be deemed marketable. Thus, the dynamics of the market may require designation of a revenue source, but the case law cited by Frankenmuth does not require such a designation. There is no case which holds a non-ad valorem revenue source must be designated in order for a court to determine compliance with the Florida Constitution. Whether the party anticipating payment has forgone the security of a pledge of payments from a specific non-ad valorem revenue source simply is irrelevant to the appropriate constitutional inquiry .

Escambia County seems also to have misread Frankenmuth's argument regarding the cases cited by Frankenmuth. See Escambia County Brief p. 17. Frankenmuth argued that this Court has condemned repeatedly any inquiry which focuses on whether an obligation could affect ad valorem taxes. Rather, the focus is on the question whether a pledge of ad valorem revenue occurred. The Lease here clearly states that ad valorem revenue is not pledged and that Frankenmuth has no ability to compel a levy of the ad valorem taxing power. That is the only appropriate inquiry sanctioned by the Florida Supreme Court.

Escambia County seems to suggest that, while it accepted and made use of the equipment, it should not be held liable under the Lease because it now considers the Lease to be unwise. This theory is not highlighted for good reason, as the County previously approved a similar lease and this Court does not review the County's actions for sound business judgment. See supra p. 1. Further, Escambia County and Magaha suggest that the equipment subject to the Lease was not functional. While this is not an

appropriate consideration in determining whether the Lease is valid, the clear testimony, including the testimony of Escambia County's own independent consultant, demonstrated that the computer equipment worked appropriately. Vol. 2, Doc. 95 (Joseph A. Flowers, Nov. 1995 depo) p. 44; (Rodney Wallace depo) pp. 58, 100-101; (Robert Jacobson depo) pp. 24-28. The impact of the County's decision to accept and use the equipment is discussed later in this brief. See infra pp. 11-12.

Contrary to Escambia County's assertion, Frankenmuth never has contended that the mere act of appropriating funds for scheduled lease payments resulted in its liability under the Lease. Escambia County Brief p. 39. Rather, Frankenmuth relied on the totality of the circumstances to demonstrate Escambia County's acceptance and approval of the Lease. Frankenmuth Brief pp. 14-18. When the factual circumstances presented by this case are reviewed in light of the case law cited by Frankenmuth, it can be concluded that Escambia County ratified the Lease. None of the cases cited by Escambia County dictate a different result.

By example, Escambia County cited County of Brevard v. Miorelli Eng'g, Inc., 703 So.2d 1049 (Fla. 1997). This Court declined there to hold the doctrines of waiver and estoppel can be used to defeat the express terms of a contract with a county. Miorelli Eng'g, 703 So.2d at 1051. Miorelli Engineering was then not allowed to argue that, by directing changes in the work without following the formalities of the contract, Brevard County had waived the written change order requirements of the contract. Thus, Miorelli Engineering could not recover for extra work for the county which was beyond that which had been described in their written contract. Here, Frankenmuth is not attempting to defeat or add to the express terms of the Lease. Rather, Frankenmuth is attempting to determine against whom the express terms of the Lease may be enforced. Neither Miorelli nor any other case cited by the County holds that counties may not ratify contracts.

Both Escambia County and Amicus have asserted that the Lease was not approved at a public meeting. Amicus correctly concedes that purported violations of the public records law can be cured by a subsequent public meeting. Amicus Brief p. 10. The discussions between Flowers and Escambia County Commissioners and Escambia County staff, together with the votes taken at public meetings by the Escambia County Commissioners, show Escambia County had knowledge of the Lease, the Lease was ratified, and the public meeting law was satisfied.

Joe Flowers entry into the Lease was publicized by him in correspondence to the Board of County Commissioners. One of Flowers' letters was discussed at a May, 1994, meeting of the Board of County Commissioners. Escambia County even changed its own Technology Plan in reliance on Flowers' computer advancements. After obtaining copies of the Lease, Escambia County agreed with Magaha that Escambia County would accept

responsibility for the A-11 System and Magaha would maintain the imaging system. Escambia County voted to take action to utilize the leased equipment at two public meetings prior to this suit being filed. Frankenmuth Brief pp. 14-17. These actions are fatal to Escambia County's contention it did not ratify the Lease.

Escambia County may not decide to keep leased equipment without assuming the responsibilities related to the equipment. Under the UCC, one who acquires the right to possession and use of goods under a lease is a "lessee". Fla. Stat. § 680.1031(1)(n) (1995). Even where a lease contract does not contain the signature of a party against whom enforcement is sought, the lease is enforceable with respect to goods received and accepted by the "lessee". Id. § 680.201(4)(c). Further, the UCC provides that the principles of law and equity remain applicable to transactions covered by the Code. Fla. Stat. § 671.103 (1995). Equipment was provided under the Lease, and Escambia County voted at public meetings to retain and use that equipment. Escambia County now seeks to disavow responsibility to Frankenmuth, the holder of the commercial paper, even though Escambia County obtained the benefit and use of the equipment. Escambia County may not simultaneously retain the benefits of the Lease and seek to disavow responsibility under the Lease. H.S.A., Inc. v. Harris-in-Hollywood, Inc., 285 So.2d 690 (4th DCA 1973), cert. dismissed, 290 So.2d 493 (Fla. 1974) (noting unjustness of allowing one who has adopted a transaction or claimed its fruits to disclaim responsibility as a principal); Smith v. Shackleford, 110 So. 358 (Fla. 1926) (authority of agent can be implied from acts, conduct, and circumstances, and a subsequent ratification can bind a principal); Branford State Bank v. Howell Co., 102 So. 649 (Fla. 1924) (failure of principal to dissent and restore fruits of transaction and give notice within reasonable time leads to assent to what has been done by agent); Billings v. Orlando, 287 So.2d 316, 318 (Fla. 1973) (one may not accept and retain benefits of contract and then question the validity of the contract). By acquiring the right to possession and use of the goods leased, Escambia County placed itself in the position of a lessee of the equipment. Accordingly, it is now responsible for the equipment subject to the Lease. See Fla. Stat. §§ 680.303, .305 (1995).

II. THE FLORIDA LEGISLATURE HAS NOT SEEN FIT, AS IT HAS DONE WITH COUNTY SCHOOL BOARD LEASES, TO RESTRICT THE BROAD HOME RULE POWERS OF FLORIDA COUNTIES SO AS TO PROHIBIT THEIR USE OF NONSUBSTITUTION PROVISIONS IN LEASES, AND ESCAMBIA COUNTY HAS THE INHERENT AUTHORITY TO ENTER LEASES WHICH CONTAIN EQUIPMENT NONSUBSTITUTION PROVISIONS.

Escambia County wrongly suggests that Frankenmuth's argument by analogy comparing sections 125.01(3)(a) and 125.031 to section 235.056(2)(c)(2), Florida Statutes, is based on the statutory construction maxim of *expressio unius est exclusio alterius*. Escambia County Brief pp. 41-43. Based on this erroneous assumption, Escambia County claims Frankenmuth argued section 235.056(2)(c)(2), governing school boards, constitutes implied authority for a county to enter lease purchase agreements with nonsubstitution clauses. This is absolutely incorrect, and Escambia County's failure to address the pertinent case law cited by Frankenmuth with respect to a county's broad home rule power illustrates the weakness of Escambia County's argument.

The *expressio* maxim has no application to the argument made by Frankenmuth. Frankenmuth argued by analogy in comparing sections 125.01(3)(a) and 125.031 to section 235.056(2)(c)(2), Florida Statutes. Frankenmuth's argument is akin to a request this Court construe the statutory sections *in pari materia*.

In Florida, "statutes must be construed *in pari materia* with all other laws upon the same or similar subjects. . . ." State ex rel. McClure v. Sullivan, 43 So.2d 438, 441 (Fla. 1949). Frankenmuth simply requests this Court consider pertinent Florida statutes relating to the ability of local government bodies to enter into equipment financing leases with nonsubstitution clauses. Reference to the statutes governing a school board's power to enter such leases should be helpful to this Court in determining whether Escambia County's power to contract has been similarly limited by the Florida Legislature.

In its haste to link Frankenmuth's argument to the *expressio* maxim of construction, Escambia County incorrectly stated that all cases cited by Frankenmuth involved construction of two parts of the same statute. Escambia County Brief p. 43. The decisions of this Court cited by Frankenmuth utilized the *in pari materia* theory of statutory interpretation to compare provisions of differing statutes to determine the legislative intent behind the statutes involved in the respective cases. Frankenmuth Brief p. 26. "[I]t is an established rule of statutory construction that statutes which relate to the same person or thing or to the same class of persons and things may be regarded as *in pari materia*. . . ." Sanders v. State ex rel. Shamrock Properties, Inc., 46 So.2d 491, 495 (Fla. 1950).

Escambia County suggests Frankenmuth urges this Court to adopt Frankenmuth's

position that a county may enter a lease with a nonsubstitution provision based only on legislative silence on this issue. Escambia County Brief p. 43. The Santa Rosa County v. Gulf Power Co. decision, which Escambia County failed to address in its Brief, dictates the determination Escambia County had the authority to enter a lease with an equipment nonsubstitution provision in the absence of an express legislative prohibition to the contrary. Santa Rosa County v. Gulf Power Co., 635 So.2d 96 (1st DCA), cause dismissed sub nom., Escambia River Electric Coop., Inc. v. Santa Rosa County, 641 So.2d 1345 (Fla. 1994), rev. denied, 645 So.2d 452 (Fla. 1994). No such legislative prohibition exists as to Florida counties, and the "silence" of the legislature results in authority for Escambia County's actions under its otherwise broad home rules powers.[3]

Stated simply, Frankenmuth's argument is that in the 1980s the Florida Legislature was clearly aware of the existence of nonsubstitution provisions in governmental equipment financing leases. The Legislature acted with respect to school boards, but took no action with respect to counties. Counties have broad powers to contract, and there are limited restrictions with respect to a county's ability to enter leases. This Court should make reference to the statute specifically prohibiting school boards from agreeing to nonsubstitution provisions in determining that counties are not similarly restricted.

III. THE COMPTROLLER OF ESCAMBIA COUNTY, FLORIDA, MAGAHA'S CONSTITUTIONAL ALTER EGO AND PREDECESSOR IN OFFICE, HAD INDEPENDENT AUTHORITY TO EXECUTE A LEASE OF COMPUTER EQUIPMENT.

Magaha contends the federal district court determined both that county constitutional officers do not have the power to contract and that, under section 125.031, only counties have the power to enter "long term lease contracts." Magaha Brief p. 14. No such explicit determinations were made. Rather, the federal district court stated simply that it would not address the issues presented by Frankenmuth as to Magaha because of its conclusions that Escambia County ratified the Lease. Vol. 4, Doc. 140, p.

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[3] Escambia County also contends the equipment nonsubstitution provision should not have been severed from the Lease by the federal district court, as it constitutes the "price term" of the Lease. See Escambia County Brief pp. 19-22. The Lease schedules contain the amounts due under the Lease for the equipment subject to the Lease, and those amounts are stated on a yearly basis. At best, the nonsubstitution provision is a remedy available to the lessor under the Lease. A lessor is not prohibited from having remedies against a government body under a lease containing a nonappropriation provision. See Frankenmuth Brief p. 33. Further, the Lease has a severability clause which allows severance of the nonsubstitution remedy if it is unconstitutional. Vol. 1, Doc. 1, Exh. A, ¶ 30.

17. Yet, Magaha seeks to avoid liability on the Lease, notwithstanding that his predecessor in office, the Comptroller of Escambia County, Florida, was delegated a portion of the sovereign power and should have the independent authority to enter the Lease and notwithstanding the fact Magaha assumed control of certain of the equipment subject to the Lease. See supra pp. 11-12 ; Frankenmuth Brief p. 17, point 7.

The Comptroller of Escambia County, Florida, was an elected constitutional officer. Like the Clerk, the Comptroller derived authority and responsibility from both constitutional and statutory provisions. Alachua County v. Powers, 351 So.2d 32 (Fla. 1977). As an officer recognized by the Florida Constitution, a Comptroller, like a Clerk, is delegated a portion of the sovereign power. Alachua County, 351 So.2d at 42. Both the Clerk and the Comptroller of a county are able to utilize the provisions of Chapter 145, Florida Statutes, to determine how their budget will be controlled. If they retain complete control over their own annual budget they are considered a county fee officer. If they turn over all fees collected by their office to the county commissioners they are deemed county budget officers, and they must submit their budget to the local board of county commissioners. Yet, even with this potential for budgetary oversight by a board of county commissioners, this Court has held Chapter 145 is not intended "to alter the clerk's authority as a constitutional officer or to place his office under the control or jurisdiction of the board" of county commissioners. Alachua County, 351 So.2d at 41. The holding in Alachua County v. Powers, the preeminent Florida case discussing the powers of the Clerk of Court and the Clerk's alter ego, the Comptroller, is clear--both are officers recognized by the Florida Constitution and they each possess sovereign powers which permit them significant control over their offices, regardless of the source of funding for the operations of their offices.

The cases cited by Magaha do not support Magaha's conclusion that the former Comptroller of Escambia County, Florida, was without authority to enter into the Lease. Magaha Brief pp. 17-18. None of the cases address directly the powers of a Clerk or a Comptroller. The primary case relied on by Magaha, Amos v. Matthews, 126 So. 308 (1930), dealt with the authority of the State of Florida to levy a tax. While it did discuss certain elements of local government, the local government focus in Amos was with respect to counties. Amos recognized that the Florida Legislature could not entirely usurp the constitutionally created local institutions of government. Amos, 126 So. at 321. It was there stated by this Court that, "the performance of county functions of truly local concern shall be confided to county officers." Amos, 126 So. at 320. The Clerk of the Circuit Court and a County Comptroller are such officers.

The Florida Legislature placed significant duties with the office of the Escambia County Comptroller. Ch. 73-455, 1973 Fla. Laws 194. In this age, it would be unusual to suggest that an elected official in local government has no need for the use of computer

equipment in performing the duties for which the official is responsible. Indeed, Mr. Flowers testified that the Comptroller's office used computer equipment for many years prior to the Lease, and he further testified computer equipment was needed in the performance of his job. Vol. 2, Doc. 95 (Joseph A. Flowers, Nov. 1995 deposition), pp. 6-10. Escambia County was not required to approve a lease of computer equipment by Flowers. As a constitutional county officer, Flowers had the inherit authority to enter the Lease in order to further his ability to fulfill the obligations of his office. Alachua County v. Powers, 351 So.2d 32, 42 (Fla. 1977) (finding the Clerk of the Circuit Court, the Comptroller's constitutional alter ego, is a county officer delegated a portion of the sovereign power); Times Publishing Company v. Ake, 645 So.2d 1003 (2nd DCA 1994), aff'd, 660 So.2d 255 (Fla. 1995) (when the Clerk of the Circuit Court is performing the duties which may be delegated under the constitution to a Comptroller, the Clerk is an "autonomous elected county officer").

Magaha concedes that the decision of the Florida Supreme Court in Alachua County allows a Clerk to determine the wages and duties of deputies appointed to assist a Clerk. Magaha Brief pp. 22-23. This concession is significant as to the powers of a Clerk or a Comptroller to perform their respective duties. The Clerk of the Circuit Court has the power under section 28.06, Florida Statutes, to appoint deputies, but the statute does not authorize the Clerk to determine their wages and duties. Clearly, this Court has recognized that the Clerk's statutory grant of authority carried with it the authorization of broad powers to accomplish the Clerk's duties. This decision is entirely consistent with other decisions of the Florida Supreme Court regarding implied authority. See e.g., Pan-Am Tobacco Corp. v. Department of Corrections, 471 So.2d 4 (Fla. 1984) (where legislature authorizes entities of state to undertake activities which, as a matter of practicality, require a contract, the Legislature clearly intends that contracts be valid and binding on both parties); Ginsberg v. City of Daytona Beach, 137 So. 253 (Fla. 1931) (power of municipality to enter into contract and note to pay for improvement may be implied as a necessary incident to power conferred to construct the improvement).

Magaha also suggests that section 125.031, Florida Statutes, was found by the district court to limit the power of his constitutional predecessor in office to enter into the Lease. While the federal district court addressed in detail the applicability of section 125.031 as to Escambia County, it did not address the affect of this provision on independent constitutional officers, such as the Comptroller or the Clerk. Vol. 4, Doc. 140, pp. 7-10. Section 125.031 limits a county's otherwise broad power to contract with respect to leases and requires that leases not exceed a thirty year term. This provision no where attempts to limit the sovereign powers of the Clerk or the Comptroller's office under the Florida Constitution, if indeed it could so limit those powers. Thus, section 125.031 has no relevance to the analysis whether a county Clerk or Comptroller can enter

an equipment finance lease.

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CERTIFICATE OF SERVICE

I hereby certify that the original and seven copies of this reply brief were served on the Clerk for the Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927 by U. S. MAIL and that a copy of this brief was served on Carol Sanzeri, Esquire, Pinellas County Attorney's Office, 315 Court Street, Clearwater, FL 33756 and on David Tucker, Esquire, Escambia County Attorney's Office, 14 West Government Street, Room 411, Pensacola, Florida 32501 and on Paula G. Drummond, Esquire, 120 S. Alcaniz Street, Pensacola, Florida 32501 by U. S. MAIL this _____ day of November, 1999.

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